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84-1494

No.

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In The

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

CAROLINE JEANETTE BRISTER, wife of/and ANTHONY HERMAN GERARD, for themselves and on behalf of their minor children SHARON, DOUGLAS, PATRICK, PAIGE and SANDRA

Plaintiffs and Appellants

VERSUS

THE PARISH OF JEFFERSON, State of Louisiana; THE SHERIFF, Parish of Jefferson, State of Louisiana; THE STATE OF LOUISIANA; FIREMEN'S FUND INSURANCE COMPANY; ROBERT KERRY and DEPUTY SHERIFF SERGEANT J. KOEHLER

Defendants and Appellees

On petition for writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITION FOR CERTIORARI

Hugh G. Oliver, Attorney of Record for Petitioners.
528 - 4th Street, P. O. Box 511 - Westwego, La., 70094
(504) 341-5811

52 pp

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QUESTIONS PRESENTED FOR REVIEW

(1) Whether a lifetime disability is compensated by a $1,000.00 judgment from a state court of appeal when that court refuses to remand the case for trial so that plaintiff may present the testimony of his physician when that information had been kept from the court previously;

(2) Whether a deputy sheriff and dogcatcher may enter a private home in search of a 10 pound dog and whether the deputy may club the householders;

(3) Whether the $1,000.00 judgment for a lifetime disability and refusal of of state court to appeal to remand the case for trial so that plaintiff's psychiatrist may testify is a violation of plaintiff's constitutional right to due process.

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OPINIONS OF LOWER COURTS AND TRIBUNALS

1. Decision of 24th Judicial District Court, Parish of Jefferson, dated June 9, 1981, without jury, Hon. H. Charles Gaudin, Judge, Division G, entitled: "CAROLINE JEANETTE BRISTER, wife of/and ANTHONY HERMAN GERARD ET AL VS. THE PARISH OF JEFFERSON, STATE OF LOUISIANA, ET AL" No: 210-460. (Appendix A)

2. Opinion of Court of Appeal, Fifth Circuit, State of Louisiana, dated December 9, 1982, entitled: "CAROLINE JEANETTE BRISTER, wife of/and ANTHONY HERMAN GERARD, FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN SHARON, DOUGLAS, PATRICK, PAIGE and SANDRA versus THE PARISH OF JEFFERSON, STATE OF LOUISIANA; FIREMEN'S FUND INSURANCE COMPANY THEIR INSUROR; ROBERT KERRY and

DEPUTY SHERIFF SERGEANT J. KOEHLER",
No. 5-145 (Appendix B)

3. Decision by United States Court of Appeals, Fifth Circuit, dated Dec. 6, 1984, affirming summary judgment granted defendants by district court. (Appendix D)

JURISDICTIONAL GROUNDS

The jurisdiction of this Court is invoked pursuant to U. S. C. 28:2101 and U. S. C. 28:1257 (3).

Petitioners seek to review the decision of Dec. 6, 1984 by the United States Court of Appeals, Fifth Circuit, affirming summary judgment granted defendants by the district court.

STATUTES INVOLVED

This is a 1983 Civil Rights claim by householders injured by the invasion of their home by a deputy sheriff and a dog-catcher. Article 1437, Louisiana Code of Civil Procedure, is the basis for Gerard asking for a new trial because he was not allowed to depose his psychiatrist under this article.

STATEMENT OF THE CASE

Anthony H. Gerard, 60, suffers from psychic trauma, traumatic epilepsy and impotence. These problems came from an attack he suffered from a Jefferson Parish deputy sheriff February 28, 1978 at his home in Avondale Subdivision near New Orleans.

The events leading to the attack on Gerard began on Thursday, February 25, 1978. About 4 p. m. dogcatcher Kerry came to the Gerard home and accused them of allowing their 10-pound mutt Ding-a-Ling to roam the streets. Kerry went and found a deputy who correctly informed him that all he could do was to issue a citation to Gerard to-appear before a parish committee relative to the claims about his dog. Kerry did this.

Then on Sunday morning about 8 a. m. Kerry returned to the Gerard house. He was met by one of the children who advised him to return later. Kerry went and found another deputy - J. Koehler - and came back. Gerard met Koehler at the front door and heated words were exchanged. Koehler entered the house and hit Gerard on his left brow with a club. Then he poked Mrs. Gerard in the

abdomen and then he left. He came back in a few minutes with many policemen and police cars. The police stormed the house and took the Gerards off to jail in their nightshirts, stopping at a hospital enroute wo Gerard could have eight sutures put in his brow to close the wound Koehler had dealt him.

The Gerards sued in both state and federal courts. The state trial court dismissed the suit and the state court of appeals granted a $1,000.00 judgment stating that damages were not shown but ignoring the repeated efforts of Gerard to have the testimony of psychiatrist Dr. Roy Barnes put before the court. The federal courts have dismissed on the grounds of res judicata.

ARGUMENT

Dog control is a matter of public health and safety. Since 1967 warrants have been required for such searches as arose under the public health and safety laws. CAMARA V. MUNICIPAL COURT, 87 S. Ct. 1727; SEE. V. CITY OF SEATTLE, 87 S. Ct. 1737.

The deputy and the dogcatcher had no warrant.

The trial record shows that Gerard made $15,000.00 a year as an advertising salesman. His $1,000.00 award would not compensate for a month of lost income. In a recent Louisiana postneurosis recovery plaintiff was awarded $60,000.00. BREAUX V. ROY YOUNG, INC. La. App., 3d Cir., 1981, 397 So.2d 1384.

Gerard has repeatedly sought a post-trial deposition of Dr. Roy Barnes, psychiatrist, under Louisiana Code of Civil Procedure article 1437, derived from federal procedural law.

The state court of appeals lamented on a lack of evidence in the record but refused to remand the case so that the deposition of Dr. Barnes could be put in the record.

In MONTANA v. UNITED STATES, 440 U.S. 147, 164 n. 11 (1979) it was pointed out in construing 28 U.S.C. 1738, that "Redetermination of issues is warranted if there is reason to doubt the quality, extensiveness, or fairness of the procedures followed in prior litigation." (Emphasis added.)

A $1,000.00 judgment for a lifetime injury and loss of $15,000.00 a year income is not "fair."

The Louisiana 5th Circuit Court of Appeal said the violations at issue - failure to have a dog license - were misdemeanors and therefore found the deputy to have had reasonable cause to arrest the Gerards.

This was error. Under Louisiana Code of Criminal Procedure, art. 213(3) m the offense of the Gerards would have had to be at least a misdemeanor.for the deputy to have been authorized to make an arrest.

The deputy who advised the dogcatcher on Feb. 25, 1978, that all he could do to the Gerards was to issue a citation under the parish ordinance was correct. Only if a person fails to respond to the order to pay a fine for a violation does the misdemeanor arise.

CONCLUSION

It is respectfully requested that the Court grant a Writ of Certiorari and review the decision of the United States Court of Appeals for the Fifth Circuit which affirmed a summary judgment dismissing plaintiffs' suit.

CERTIFICATE

The undersigned counsel of record certifies that service has been made by placing three copies of the foregoing petition in the U. S. Mail, postage prepaid on all parties required to be served listed below on this 1 day of MAR, 1985

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APPENDIX A

TWENTY-FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

No. 110-460 Division "G"

CAROLINE JEANETTE BRISTER, wife of/
and ANTHONY HERMAN GERARD, ET ALS

VS.

THE PARISH OF JEFFERSON,

STATE OF LOUISIANA, ET ALS

Filed June 9, 1981

J U D G M E N T

This case was heard on June 2 and 3, 1981, and concerns incidents that occurred on February 26, 1978.

After hearing the testimony and considering the evidence the Court makes these findings of fact:

(1) That Sgt. Joseph Koehler of the Jefferson Parish Sheriff's Office went to petitioner Anthony

Gerard's home at the request of and to assist Sgt. Robert Kerry, a dog pound officer employed by the Parish of Jefferson;

(2) That petitioners did in fact have an untagged and unlicensed dog in their home, and that they had refused to turn the animal over to Sgt. Kerry;

(3) That Sgt. Kerry had seen the dog and knew it was in the Gerard residence, and that he (Sgt. Kerry) had a lawful right to seize the animal;

(4) That Mr. Gerard was intentionally not truthful when he told Sgt. Kerry and later Sgt. Koehler that the dog was not on the premises;

(5) That when Mr. Gerard met Sgt. Koehler in the doorway, he

(Gerard) was forcefully loud and insisted that the dog was elsewhere;

(6) That Mr. Gerard who weighed approximately 300 pounds, persisted in his efforts to prevent seizure of the dog; he was placed under arrest by Sgt. Koehler and a scuffle ensued during which Mr. Gerard was struck by Sgt. Kochler's PR-24, a plastic club.

On February 8, 1979, Mr. Gerard and his wife Carolyn were tried in the Second Parish Court of Jefferson Parish. Mr. Gerard was found guilty of resisting arrest (L.S.A-R.S. 14: 108) and of violating two Jefferson Parish ordinances regarding (a) the licensing of dogs and (b) the refusal to turn over untagged animals to dog pound officers. Mrs. Gerard was also found guilty of violating the Parish ordinances.

In their attempt to sustain the instant tort action, petitioners contend that Sgts. Koehler and Kerry acted illegally and/or improperly. The Court does not agree. Both officers had the right to be where they were, and both acted reasonably and lawfully considering all circumstances, particularly Mr. Gerard's peace-disturbing behavior.

Thus,

IT IS ORDERED, ADJUDGED AND DECREED:

(1) That there be judgment in favor of defendants Joseph Koehler, et als, and against petitioners Anthony Herman Gerard et als, dismissing their demands, with prejudice and at their cost; and

(2) That defendants' objection to petitioners' supplemental petition

be and it is hereby maintained because (a) said petition was not timely filed and (b) the petition relates to items of damages which are not at issue.

JUDGMENT READ, RENDERED AND SIGNED in open court in Gretna, Louisiana this 9th day of June, 1981.

(signed) Charles Gaudin
JUDGE

-

.

APPENDIX B

TWENTY FOURTH JUDICIAL DISTRICT COURT

PARISH OF JEFFERSON

STATE OF LOUISIANA

No: 210-460 Division "G"

CAROLINE BRISTER, ET AL

VS.

PARISH OF JEFFERSON, ET AL

JUDGMENT

It is ordered that mover in rule's request to depose Dr. Roy J. Barnes be and it is hereby denied.

GRETNA, LOUISIANA, this 2nd day of October, 1981.

(signed) Charles Gaudin
JUDGE

-

APPENDIX C

NO. 5-145

COURT OF APPEAL

FIFTH CIRCUIT

STATE OF LOUISIANA

* * * * * * *

CAROLINE JEANETTE BRISTER, wife of/ and ANTHONY HERMAN GERARD, FOR THEMSELVES AND ON BEHALF OF THEIR MINOR CHILDREN SHARON, DOUGLAS, PATRICK, PAIGE and SANDRA

VERSUS

THE PARISH OF JEFFERSON, STATE OF LOUISIANA, FIREMEN'S FUND INSURANCE COMPANY, THEIR INSUROR; ROBERT KERRY and DEPUTY SHERIFF SERGEANT J. KOEHLER

APPEAL FROM THE
TWENTY-FOURTH JUDICIAL DISTRICT COURT
PARISH OF JEFFERSON
No. 210-460 Division "G"
HONORABLE H. CHARLES GAUDIN, JUDGE

* * *

CHARLES GRISBAUM, JR.
JUDGE

December 9, 1982

(Court composed of
Judges L. Julian Samuel,
Thomas J. Kliebert, and
Charles Grisbaum, Jr.)

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AFFIRMED IN PART AND

REVERSED IN PART.

This personal injury suit involves the alleged torts of false imprisonment battery, and invasion of privacy. Plaintiffs, a husband and wife, individually and on behalf of their minor children bring suit to recover damages from a police officer, the Sheriff, Parish of Jefferson, a Jefferson Parish dog pound officer, the Parish of Jefferson, and its insuror for the alleged intentional torts of battery and false imprisonment and for an alleged illegal search of their home. Plaintiffs appeal from the trial court's dismissal of plaintiffs' cause against the dog pound

officer and the Parish of Jefferson and its insuror after the close of plaintiffs' case and from the judgment against the plaintiffs and in favor of the defendants, the police officer and the Sheriff, Parish of Jefferson, rendered after trial on the merits. We affirm in part and reverse in part.

In February of 1978 plaintiffs, Anthony Gerard and his wife, owned a dog, Ding-a-Ling. Jefferson Parish dog pound officer, Mr. Robert Kerry, had received numerous complaints from the neighbors that this animal was allowed to roam the streets of the neighborhood. Officer Kerry himself had observed the dog loose on more than one occasion. He also believed that the dog was unlicensed and unvaccinated. On February 23, 1978 defendant Kerry gave Mr. Gerard a

citation for having an unlicensed, untagged, and unleashed dog. Several days later, on Sunday, February 26, 1978, Mr. Kerry testified that as he was checking the neighborhood for roaming animals, he again observed plaintiffs' dog loose and stopped by plaintiffs' house at approximately 8:00 a.m. to check whether plaintiffs had obtained the correct papers on the dog. The following episode ensued. Defendant Kerry was met by one of the Gerard children who asked him to return later because his parents were not awake. Because he was given what he felt to be unresponsive and evasive answers to his request to see the dog's vaccination papers, Kerry called the Jefferson Parish Sheriff's office for assistance. Defendant Sergeant Koehler responded.

Both Koehler and Kerry went to the Gerard home. According to Koehler and Kerry, when Mr. Gerard came to the door he began yelling at them. Sergeant Koehler testified that he explained the Jefferson Parish Animal Control Ordinance (No. 12146)[1] to Mr. Gerard; however, Mr. Gerard insisted that the dog was not in his possession and that his father-in-law was having her vaccinated. At trial Mr. Gerard testified that he lied about Ding-a-Ling and that the dog was actually hidden in the bath room. Mr. Gerard was advised that if he did not produce the dog or his papers of vaccination, Sergeant Koehler would arrest him. A heated argument followed.

The parties have somewhat different versions of what transpired, but the essential events are agreed upon by all parties. Sergeant Koehler told Mr. Gerard he was under arrest and attempted to effectuate the arrest by taking Gerard's arm. According to Kerry, Mr. Gerard pushed Sergeant Koehler over and attempted to slam the door on Sergeant Koehler. Koehler persisted in his efforts to take Mr. Gerard into custody by grabbing his waistband. Again, Sergeant Koehler told Gerard he was under arrest and attempted to lead him back to the front door, but Gerard brushed his hand off of his pants. Sergeant Koehler attempted several times to use his PR24 stick to place Mr. Gerard's arm behind his back. However, due to Mr. Gerard's size and strength, Koehler was not able to gain control of Gerard

using this method. The officer attempted again to grab Mr. Gerard's waistband, but the waistband broke, and Gerard's pants fell. Sergeant Koehler testified that Mr. Gerard reached down to pick up his pants and arose threateningly. Fearful that Mr. Gerard would strike him, Sergeant Koehler struck Mr. Gerard with the PR23 stick. Sergeant Koehler also testified that he struck Mrs. Gerard inadvertently in the stomach as she was holding his arm. Again the police officer tried to lead Mr. Gerard to the front door but was unable to do so. Due to his inability to control Gerard, Sergeant Koehler left the Gerard home and called for additional police assistance.

Mr. Gerard's version of the episode is that as soon as he came to the door Sergeant Koehler started

arguing with him. According to Gerard, Sergeant Koehler asked him where the dog was and stepped across the threshhold. Immediately, Gerard asked, "What are you doing?" When Gerard asked if he was being arrested because the dog was not there, Gerard was told that he was under arrest. Gerard's reply was that the officer could not arrest him because he had no warrant. When he moved away from the police officer, the officer followed him into the house. At the hallway Sergeant Koehler grabbed his pants; the catch broke, an and as he reached down to pick them up, Officer Koehler struck him across the head with a billy club. Gerard and his wife, as well as two of his children, testified that Sergeant Koehler then turned and poked Mrs. Gerard in the stomach and ran out the

front door.

Gerard testified that when he did not come out when ordered out of the house over a loudspeaker, the police kicked his back door down and placed him and his wife under arrest. They were escorted out of the house and taken away. The dog catcher then entered the Gerard home, found Ding-a-Ling near a laundry room, seized her in the presence of at least one of the Gerard children, and brought her to the animal control center.

ISSUES

The issues are as follows:

1) Whether plaintiffs, husband and wife, are entitled to damages for the intentional tort of false imprisonment?

2) Whether plaintiffs, husband and wife, are entitled to damages

for invasion of privacy?

FALSE ARREST AND IMPRISONMENT

False arrest and imprisonment occur when one arrests and restrains another against his will without color of legal authority. Kyle v. City of New Orleans, 353 So. 2d 969, 971 (La. 1977); Barfield v. Marron, 62 So. 2d 276, 280 (La. 1952). If a police officer acts pursuant to statutory authority in arresting and incarcerating a citizen, he is not liable for damages for false arrest and imprisonment. Kyle, supra. Under Louisiana Code of Criminal Procedure article 213 (3), a peace officer may arrest a person without a warrant, when the officer has "reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer..." This article

provides statutory authority for the arrest in this case.[2] The reasonable cause required in article 213 (3) exists when the facts and circumstances within the arresting officer's knowledge and of which he has reasonable and trustworthy information are sufficient to justify a man of average caution in belief that the person to be arrested has committed or is committing an offense. See State v. Davis, 407 So. 2d 666, 668 (La. 1981); State v. Elliot, 407 So. 2d 659, 661 (La. 1981).

In this case the dog catcher asked the police officer to assist him in enforcing an animal control ordinance. The dog catcher explained he had been to the plaintiff's home on two occasions and had warned them that a vaccination certificate for

the dog had to be produced. He told the officer that he had been to the house only fifteen minutes before and had seen the dog at the house. The police officer, therefore, had reasonable cause to believe that plaintiffs had violated Jefferson Parish Ordinance No. 12146 which requires, among other things, that one have a license and/or proof of vaccination of a dog. Since the police officer had authority for the arrest under Criminal Code of Procedure article 213 (3), plaintiffs cannot recover damages for false arrest and imprisonment.

BATTERY

Also to be considered is whether plaintiffs, the husband and wife, can recover for batteries inflicted upon them by the police officer. A lawful arrest is a defense to the intentional

tort of battery when reasonable force is used to effect such an arrest. See Kyle, 353 So. 2d 969, 972.[3] However, if an officer used unreasonable or excessive force, he and his employer are liable for any injuries which result. La. C.C. art. 2320; Kyle, 353 So. 2d 969, 972; Picou v. Terrebonne Parish Sheriff's Office, 343 So. 2d 306, 308 (La. App. 1st Cir. 1977); Taylor v. City of Baton Rouge, 233 So. 2d 325, 330 (La. App. 1st Cir. 1970). We must evaluate this officer's actions against the standard of an ordinary, prudent, and reasonable man placed in the same position and with the same knowledge as this officer. Kyle, 353 So. 2d 969, 973; Picou, supra. Since the degree of force employed is a factual issue the trial court's finding is entitled to great weight. Kyle,

supra; Canter v. Koehring Co., 282 So. 2d 716, 724 (La. 1973); Picou, 343 So. 2d 306, 309. Kyle sets forth several factors to be considered in making this determination of reasonableness such as the known character of the arrestee, the risk and dangers faced by the officer, and the nature of the offense involved, the chance of the arrestee's escape if the particular means are not employed, the existence of alternative methods of arrest, the physical size, strength and weaponry of the officer as compared to the arrestee, and the exigencies of the moment. Kyle, supra.

The facts and circumstances of this case support the trial court's finding that the defendant police officer acted reasonably. The record reflects that Mr. Gerard was upset when he came to the door. He responded to

Officer Koehler's questions in a belligerent manner and often with evasive answers. When Koehler placed Mr. Gerard under arrest, Gerard resisted and retreated inside his home. Due to Mr. Gerard's size and strength, Koehler's several attempts to effectuate his arrest were of no avail. Officer Koehler testified that he struck Mr. Gerard with the PR24 when Gerard made a fist. Koehler stated that he felt Gerard would strike him. Moreover, Officer Koehler hit Mr. Gerard only once which Koehler stated had little effect upon Gerard; Gerard did not go to his knees nor did he surrender to the officer but continued to resist the officer. This plaintiff's general demeanor, the fact that he weighed 300 pounds, combined with the fact that he seemed to be ready to strike the

officer, indicate that the officer's one blow to plaintiff Anthony Gerard was not unreasonable. We also accept, as did the trial court, Officer Koehler's version of the episode that in attempting to dislodge Mrs. Gerard's hold on his arm he accidently hit her in the stomach. Canter, supra. Under the facts, the police officer made a lawful arrest and used reasonable force in order to effect the arrest and to overcome plaintiff's resistance.

INVASION OF PRIVACY

Louisiana recognizes tort recovery for invasion of privacy.[4] The right to privacy includes the right to be free from unwarranted intrusion into one's own quarters.[5] Parish National Bank, 397 So. 2d 1282, 1286. In Louisiana in order to recover for an invasion of privacy, plaintiffs

must show they have an "actionable" claim not merely an "actual" claim. Parish National Bank, 397 So. 2d 1282, 1286; Jaubert, 375 So. 2d 1386, 1389; Love, 273 So. 2d 460, 464-66; Hamilton, 82 So. 2d 61, 70. An invasion of privacy is "actionable" when the defendant's conduct is unreasonable and seriously interferes with the plaintiff's privacy interest. To determine the reasonableness of the defendant's conduct, this court must balance defendant's interest in pursuing his course of conduct against plaintiff's interest in protecting his privacy. Parish National Bank, supra; Jaubert, supra. "Where a defendant's action is properly authorized or justified by circumstance, it may be found reasonable and nonactionable even though it amounts to a slight invasion of the plaintiff's privacy." Parish National

Bank, supra.

Applying the above principles, we find that plaintiffs do not have an actionable claim for invasion of privacy against the police officer and his employer; however, plaintiffs do have an actionable claim against the dog pound officer and his employer.[6] As noted above, the police officer was authorized under La. C. Cr. P. art. 213 (3) to arrest the husband and wife; his actions were reasonable under the circumstances and, therefore nonactionable. However, the dog pound officer had no authority under the Parish Animal Control Statute[7] or any other Louisiana statutes or jurisprudence to enter the home and seize an unlicensed animal. Under the circumstances his actions were not justified. The dog had not bitten anyone nor does the record indicate that the dog was

reported as a dangerous or vicious animal. Importantly, at least one of the Gerard children still remained in the home and was present when the officer seized the dog. Considering the specific procedures set forth in the Jefferson Parish Animal Control Ordinance for violation of its procedures, we cannot say the officer was justified in entering the home.[8] When we weigh the importance of the privacy of one's home, against the Parish's interest in having animals properly licensed and leashed when upon public streets, we conclude that the dog pound officer's actions in entering the home to seize the animal were unreasonable.

Plaintiffs allege in their petition for damages that the dog pound officer's actions caused psychic injuries to themselves and their chil-

dren. They also claim entry into their home without a warrant as an injury in itself as well as damages for humiliation, mental anguish, and extreme mental suffering. The plaintiffs inadequately addressed the issues of psychological injuries at the trial court level. Consequently, the trial court granted a motion to dismiss the plaintiffs' case as to the dog officer and his employer on the grounds that no damages were proven with regards to this defendant's actions. While we agree with the trial court that the plaintiffs presented no evidence of the children's psychological injuries, we do find plaintiffs have shown they were injured by the physical intrusion into their home by the dog catcher.[9] Throughout the proceedings, there is testimony evidencing the Gerards' desire to protect the

sanctity of their home. Mr. and Mrs. Gerard made several strenuous objections to the presence of outsiders in their home without a warrant before they were arrested. We conclude that plaintiffs have shown an actionable claim for invasion of privacy against the dog pound officer and his employer and award them $1,000.00 under our authority provided in La. C. C. P. art. 2164. We reverse the lower court's dismissal of plaintiff's claim against the dog pound officer and his employer, the Parish of Jefferson, and award $1,000.00 damages for invasion of privacy to plaintiffs against Robert Kerry, the Parish of Jefferson, and its insuror, Firemen's Fund Insurance Company.

For the above reasons, we affirm that part of the trial court's judgment which finds in favor of defend-

ants. Deputy Sheriff Sergeant J. Koehler, and the Sheriff, Parish of Jefferson, and against plaintiffs. We reverse that part of the trial court's judgment which dismisses plaintiffs' claim against Robert Kerry and the Parish of Jefferson and its insuror, Firemen's Fund Insurance Company, and it is now ordered that there be judgment against those dèfendants, in solido, and in favor of the plaintiffs in the full sum of $1,000.00

AFFIRMED IN PART AND
REVERSED IN PART

---

1. Several of Jefferson Parish's Animal Control Ordinance's pertinent provisions are:

"Sec. 4-17 (c) Dogs at large; violation notices. No dog shall be permitted to run or be upon any street, alleyway,

highway, common or public square unless under the immediate control of a competent person and restrained by a substantial chain or leash not exceeding six (6) feet in length.

Sec. 4-13 (a) Registrations, tags and vaccination. It shall be the duty of the owner or keeper of every dog or cat over four (4) months old to register same with the department by purchase of a dog or cat license. Such license shall be dated and indicate the number of the license tag issued for the dog or cat at the time it is vaccinated by a licensed veterinarian or licensed veterinary technologist with appropriate anti-rabies vaccibe at the owner's expense...

Sec. 4-16 (c) Public Nuisance. Every owner or keeper of animals shall exercise proper care and control of such animals so as to prevent them from creating or becoming a public nuisance. Excessive or untimely barking, howling or yelping so as to disturb the peace and quiet of a neighborhood or its residents or to disturb the health or repose of the residents; attacking or molesting passersby or other animals; being repeatedly at large; ...all shall be deemed to be the creation of a public nuisance and the owner or keeper of an animal causing such public nuisance shall be guilty of a misdemeanor and subject to the penalties of section 4-25 of this article."

2. Payton v. New York, 445 US 573 (1980) and State v. Brown, 387 So. 2d 567 (La. 1980) prohibit a war-

rantless, non-exigent arrest in the home. However, State v. Pittman, 397 So. 2d 1297, 1298 (La. 1981) held that the Payton rule is not retroactive. The arrest in this case occurred February 26, 1978; Payton-and Brown were decided in 1980.

3. Code of Criminal Procedure art.220 authorizes the use of "reasonable" force in making arrests; it provides:

"A person shall submit peaceably to a lawful arrest. The person making a lawful arrest may use reasonable force to effect the arrest and detention, and also to overcome any resistance or threatened resistance of the person being arrested or detained." (Emphasis added)

4. See, e.g., Parish National Bank v. C. E. Lane, 397 So. 2d 1282, 1285-86 (La. 1981); Jaubert v. Crowley Post-Signal, Inc., 375 So. 2d 1386, 1388-89 (La. 1979); Lucas v. Ludwig, 313 So. 2d 12, 14-15 (La. App. 4th Cir. 1975); Love v. Southern Bell Telephone and Telegraph Co., 263 So. 2d 460, 464-66 (La. App. 1st Cir. 1972); Hamilton v. Lumbermen's Mutual Casualty Co., 82 So. 2d 61, 63-64 (La. App. 1st Cir. 1955).

5. Other forms of invasion of privacy recognized in Louisiana include the appropriation of an individual's name or likeness for the use or benefit of the defendant, publicity which unreasonably places the plaintiff in a false light before the

public, and the unreasonable public disclosure of embarrassing private facts. Jaubert, 375 So. 2d 1386, 1388.

6. La. C.C. art. 2320.

7. Although the Parish claims Section 4-21 provides authority for an unauthorized employee of the animal shelter department to enter a premises to take possession of and remove animals kept in violation of the Parish Code, this article provides removal of "abandoned" or "neglected" animals from buildings or premises.

8. Section 4-12 (c) authorizes the Animal Shelter Advisory Board to constitute a com-

mittee of three or more members to hear all complaints involving violations of the provisions of the statute. For example, this committee hears complaints under Section 4-16 (c) pertaining to animals considered to be a public nuisance because repeatedly found to be at large. It requires notice to the defendant of a hearing and a right to be represented by counsel. Also to be noted, Section 4-17 (c) authorizes the seizure of dogs found at large.

9. See, Ford Motor Company v. Williams, 132 SE 2d 206, 211-12 (Ga. App. 1963), revd on other grounds 132

SE 2d 32 (Ga. 1963) where an intrusion of privacy was found even though plaintiff was not present at the time of the entry into his home.

* * *

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

CAROLINE JEANETTE BRISTER, ET AL CIVIL ACTION

VERSUS No. 78-2520

THE PARISH OF JEFFERSON, ET AL SECTION M

JUDGMENT

This matter came for hearing on November 9, 1983. When, after hearing the argument of counsel, and considering the law therein,

IT IS ORDERED that there be judgment herein in favor of the defendants, Sgt. Joseph Koehler and Alwynn Cronvich, dismissing the claim of plaintiffs, Caroline Jeanette Brister, wife of/ and Anthony Herman Gerard, for themselves and for their minor children, Sharon, Douglas, Patrick, Paige and Sandra.

NEW ORLEANS, LOUISIANA, this 10th day of November, 1983.

s/ PETER BEER
UNITED STATES DISTRICT
JUDGE

United States Court of Appeals

FOR THE FIFTH CIRCUIT

No. 83-3730

D. C. Docket No. CA-78-2520-M

CAROLINE JEANETTE BRISTER, wife of/
and ANTHONY HERMAN GERARD, for themselves
and for their Minor Children Sharon,
Douglas, Patrick, Paige and Sandra.

Plaintiffs-Appellants

versus

THE PARISH OF JEFFERSON, State
of Louisiana, ET AL.,

Defendants-Appellees

Appeal from the United States District
Court for the Eastern District of
Louisiana

Before GEE, REAVLEY and DAVIS, Cir. Judges

J U D G M E N T

This cause came on to be heard on the record on appeal and was argued by counsel;

ON CONSIDERATION THEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in

this cause be, and the same is hereby, affirmed;

IT IS FURTHER ORDERED that plaintiffs-appellants pay to defendants-appellees the costs on appeal, to be taxed by the Clerk of this Court.

December 6, 1984

ISSUED AS MANDATE: January 2, 1985